Mr. Ira Glasser, Ex. Dir.
ACLU
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7/5/86

HAROLD WEISBERG
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Dear Mr. Glasser,

Although your timely and well-conceived letter and accompanying special mid-year report do not exaggerate the Reagan administration's assault on our traditional concepts and liberties, I think that in taking credit for the ACLU's accomplishments you err because significant attempts to erode the Freedom of Information Act have succeeded. I write you about one such failure and what, as a layman, I believe it means. In this I believe that a few other quotes from your report are pertinent: "We must prevent those erosions of liberty that are fundamental and will be very difficult to restore..." and "We must resist the government's attempts to institutionalize censorship and information control." The second quote, as you use it, relates only to threats against the major media, wealthy and powerful corporations that can and can afford to defend themselves well. It has broader applicability.

For some years, because it could malign me and because the FOIA requests I made related to an unpopular and misunderstood subject, political assassinations, the government made strenuous and often successful efforts to rewrite FOIA through the courts. When, early on, it did succeed in rewriting the investigatory files exemption to in effect immunize the FBI and CIA, I made a number of efforts to get the ACLU, the Nader people and The Reporters Committee to file amicus briefs. None did. What I am really saying is that all of you copped out and were content to allow the act to be nullified by prejudiced judges and official perjury. (I had on several earlier occasions sought to interest the ACLU in handling FOIA litigation at a time when decent precedents could be set, without success.) But because I persisted Congress did, and the legislative history is quite specific on this, enact the 1974 amendments and restored the investigatory files exemption to what it had originally enacted.

I differ from all the others working in the field of political assassinations in not being a conspiracy theorist and in having made an enormous study of how in time of great crisis and thereafter our basic institutions functioned or malfunctioned. On accuracy my work is completely accurate. There is no significant error in seven books and no single error is in any of the thousands of pages of affidavits I have filed in litigation with those who would charge me fast enough if I did err. (In this, I believe, I have also served history in making a record in court records, myself subject to the penalties of perjury and under conditions that called for official attempts at rebuttal. I have never been proven wrong in any of these attestations.) So, the government switched to stonewalling and to methods that, were the

affiants not of the FBI and CIA, would have led to severe sanctions. On stonewalling, a suit I filed in 1975 in which the ignored FOIA requests went back to 1969, I am still in court, with counsel who, when he filed the complaint, had never appeared before a jury. I believe the efforts against me were greater than usual for a number of reasons. (DJ once had a "get Weisberg" crew of six lawyers assigned to "getting" me.) One is that my persistence led to the opening of the FBI and CIA files of terrible anti-American acts. Another is that my accurate work has exposed them and has embarrassed them. I rather suspect that they have lingering hatreds because as a young man I got a Dies committee agent indicted and convicted when I turned their efforts against me around and because I was able to defeat the first major so-called "security" case when I'd been a government employee. (The State Department had fired 10 of us under the McCarran Rider shortly after World War II. Almost all of us were Jews.)

The FBI also hates me because it is well aware of how seriously it could be embarrassed if my health did not preclude my using what I have obtained from it. Those of you who were blinded by LBJ's appointment of Earl Warren to head his commission and turned off by the terrible excesses and irresponsibilities of those critics who got major attention are not aware of this and probably don't believe it. The FBI got one sample when, as James Earl Ray's investigator after my book on the King assassination appeared, I developed and prepared the evidence that, in the evidentiary hearing based on my investigation, refuted the case against him. Judge Mc Rae, in Memphis, actually held that guilt or innocence were immaterial.

There was, please believe me, an enormous coverup in the noninvestigation of the JFK assassination. The crime itself was never investigated officially. All officials sought only to make it appear to be credible that Oswald was a lone nut assassin. Because most of the withheld information was buried in the Dallas and New Orleans field offices and after I had a notion of some of what was hidden there I requested those records and when my request was ignored filed suit in 1978. The government not only never made the required searches, in one of several moments of aberrational honesty its counsel told me this. (Daniel Metcalfe, who is now co-head of DJ's OIP.) It then delayed any compliance for about four years and then, when I showed that it hadn't searched and hadn't complied, sought and from a fink judge got a discovery order. (I had, by then, at the request of Quin Shea, a history buff who headed the DJ appeals office until the FBI got him kicked upstairs, filed, and this is quite literally true, an entire file cabinet of detailed appeals and xeroxes of pertinent records disclosed to me. Again, if nothing else, I was serving history.) I had many proper and recognized reasons for refusing to comply with this Order, filed a number of undisputed affidavits, to no avail. The government presented no

evidence. It had two claimed reasons for demanding this discovery: that my compliance would enable it to prove that it had complied and if not, my subject-matter expertise was required to locate what had not been processed. While my affidavits were not refuted DJ provided attestations by an FBI FOIPA supervisor and arguments by counsel. When I refused - and the discovery demanded made any attestation impossible, because it called for "each and every" reason and document in this enormous field - and the judge and DJ feared charging me with contempt, which requires a proceeding neither dared or dares face - DJ sought a money judgement against me and I refused to pay it. It then sought a money judgement against my then lawyer and got it. (This created a conflict of interest, of course,) He spoke to the Nader law group, it agreed to represent him and sent him to Mark Lynch for representation of me. Mark agreed for purposes of that appeal only. Save for what I regarded and still regard as the major point, he did a fine job. Ahd lost. On remand the judgement against my then lawyer was dropped and the one against me was reduced, although DJ tried to increase it five times over.

Obviously, I would personally have been better off if at the outset, recognizing the odds with this particular judge and the current climate, I'd just paid the judgement. It would have taken about three months of my Social Security checks. But because of the principles involved, dpsite my serious health problems and greatly reduced physical capabilities, I could not. This gets to where your report is optimistic and I think it has much broader applicability than FOIA litigation only.

Before going into that, Mark kept his word, with my agreement he filed for recuaal and after quite some time Judge John Lewis Smith hasn't bothered to act on it. So, I've been pro se before him and now am on appeal. Given the precedents involved I think that the danger to me is much less than it is and will be to others if the precedents of the decision are not defeated.

Discovery under FOIA is without precedent, as is discovery under the conditions in this lawsuit. This is also true of sanctions now against me only. Judge Smith has ignored all the rules relating to discovery and refusing it and, to now, so has the Reaganized appeals court. I saw and I still see a great government vulnerability in this and it is the one matter I refer to with Mark above. There were overt and very prejudicial lies, and I mean lies, made up by the government and presented to the appeals court. After some discussions Mark agreed to make passing reference to this in a footnote. There was also extensive and basic perjury and ffaud and misrepresentation, by the government, by FBI SAs and counsel, thoroughly documented and entirely undenied.

Also now involved is an interpretation of Rule 60b that completely rewrites it.

Pro se, I have reduced the issues to the entirely undenied perjury, fraud and misrepresentation and to the rewriting of Rule 60b. And by the most remarkable and to me

incredible of coincidences, the FBI disclosed to a friend of mine, with the supervisor making the disclosures, the very same supervisor who provided the perjury in my case, absolutely irrefutable proof of the felonies I charged. This happened when the case was up on appeal. This is why my charges are entirely undisputed - they can't be! It is as airtight as such a thing can be. While the FBI SA was making false attestations in my litigation and to this day not withdrawing them, he was simultaneously processing and disclosing proof of his perjury to my friend who, after my health was impaired, made an FOIA request that partly duplicated one I'd filed and had been ignored by the FBI. My friend provided me with some copies of what he got. These FBI documents prove what I alleged in refusing to provide the demanded discovery. They prove the felonies I charged. They are in the case record, and the government hasn't had a word to say about them. Also incredible to me, particularly when what I alleged isn't even denied, is how Judge Smith dismissed the perjury - as merely "cumulative."

On Rule 60b, he merely ignores, as the government did, what I presented that is relevant to the government's claim that time for "new evidence" had run on me. The last three of its six clauses are intended to toll the year limit of the first three. I don't think that such an affirmed ruling will be helpful to others.

As I see it the discovery rules are being rewritten in this decision and I think it would be applicable in all civil litigation. In FOIA alone it for practical purposes means the end of that kind of litigation if the government can demand and argue it is entitled to discovery, particularly with the record to which I make only partial reference above, it is that bad.

I regret that I, aging, unwell, severely limited in what I can do and without any training in the law, have to try to prevent these evils alone. And I've only now received notice that the appeals court is giving me less than a month, until August 1. I'm not at all certain of the correct form, but I'll be asking for more time. I will be even more limited because it is almost a physical impossibility for me to search files because I can't stand still and can do almost no bending.

It seems to me also that much good could be done with a well-presented and irrefutable case of FBI and DJ lawyer perjury, fraud and misrepresentation. They've been getting away with it for years but I know of no instance in which the same person was their major affiant and simultaneously disclosed the proof of his felonies. I can understand that lawyers might fear pushing this but if they do, what happens to our rights and liberties, and when the federal courts accept and reward it, well, there are your own words, "Above all, we must maintain the independence of the federal court system itself."

Sincerely,
Harold Weisberg